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UNITED STATES
NUCLEAR REGULATORY COMMISSION

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OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

In the Matter of:

SAFETY LIGHT CORPORATION	:	
Bloomsburg, Pennsylvania Site	:	Docket Nos. 30-05980; 30-5982
(Materials License Amendment)	:	ASLBP No. 04-833-07-MLA

RESPONSE OF THE COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF ENVIRONMENTAL PROTECTION,
TO THE NRC STAFF'S RESPONSE TO THE
COMMONWEALTH OF PENNSYLVANIA'S REQUEST FOR HEARING

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DATED: OCTOBER 4, 2004

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NUCLEAR REGULATORY COMMISSION**

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I. INTRODUCTION

Pursuant to 10 CFR Section 2.309(h)(2) the Pennsylvania Department of Environmental Protection ("Department"), on behalf of the Commonwealth of Pennsylvania, by and through the undersigned counsel, submits this Reply to the NRC Staff's Response to the Commonwealth's Request for Hearing in the above-captioned matter. Contrary to the assertions of NRC staff that the Department's Request for Hearing presented only one admissible contention, the Department contends that based on the application for license renewal submitted by Safety Light Corporation ("SLC"), and the applicable regulations governing license renewal and amendment hearings, the Department's Request for Hearing presents four contentions which satisfy the requirements of 10 CFR Section 2.309(f).¹

¹ As detailed below, NRC staff agrees that the Department's Contention No. 3 is admissible, meets the requirements of 10 CFR Section 2.309(f), and provides a basis for granting the Department's request for a hearing in this matter. NRC Staff Response at 10-11. As to the Department's Contention No. 4 and Contention No. 5, while the Department in this reply does not contest staff's position that these contentions do not in and of themselves constitute admissible contentions for purposes of granting a hearing request, the Department notes that those contentions were designed to present a comprehensive picture of what the Department believes are the serious problems with SLC as a licensee in view of SLC's financial condition and the treatment of SLC by NRC staff as a result of those financial problems. Moreover as to Department Contention No. 5, it is difficult to see how an entity which by its own admission is in such dire financial straits that it cannot make required payments into an escrow fund would be capable of properly funding a

In their response to the Department's Request for Hearing, NRC staff agreed that the Department had standing pursuant to 10 CFR 2.309(d)(1) to request this hearing, NRC Staff Response at 3, and that the Department's Contention No. 3, that Safety Light should not be granted any further exemption from financial assurance requirements or a reduced rate of contribution into the escrow fund, is admissible and provides a sufficient basis that a genuine dispute of material issues of law and fact exists so as to grant a Request for a Hearing. NRC Staff Response at 10-11. The Department believes that given staff's position that Contention No. 3 is admissible, and the standards for admissible contentions set out in 10 CFR Section 2.309(f), it is clear that the Commonwealth's Contentions Nos. 1, 2, and 6 are also admissible contentions that provide additional bases for a hearing.

While staff is quite correct that the admissibility of a contention is governed by 10 CFR Section 2.309(f)(1), it is staff's interpretation of the Department's contentions as read against those standards that result in staff incorrectly labeling those contentions as inadmissible. As set out more fully below, by their own admissions in their response, staff has effectively shown that the Department's Contentions No. 1, 2 and 6 are all admissible bases for a hearing request.

decommissioning plan. In other words, the Department contends that any meaningful inquiry into whether SLC can provide an acceptable decommissioning funding plan must take into account whether or not SLC is a financially viable entity.

II. Department's Contention No. 1 is an Admissible Basis for Granting A Hearing Request.

The Department's Contention No. 1, Department's Request for Hearing at 17-18, that Safety Light's application fails to comply with applicable regulations and the directives of the Commission, provides an admissible basis for requesting a hearing. Staff concedes, NRC Staff Response at 5-6, that the Department's identification of various documentary deficiencies in SLC's license application are in fact accurate. Significantly, while staff concedes that the Department's assertions under Contention No. 3 that SLC should not be granted continued exemption from the financial responsibility requirements of 10 CFR 30.35 is an admissible basis for a hearing, they seek to distinguish the issue in Contention No. 1 where the Department notes that SLC's application fails to provide any of the necessary documentary information that would support such a request. Moreover, SLC has not been exempted from the requirements to provide a decommissioning cost estimate. See Department's Request for Hearing at 21, n.22 and the NRC documents cited therein. Staff's assertion that somehow this contention is beyond the scope of the hearing is puzzling, given SLC's specific request for continued exemption from decommissioning funding requirements, and staff's reliance on *Long Island Lightning Company (Shoreham Nuclear Power Station, Unit 1)* LBP-91-39, 34 NRC 273, 282 (1991)("LILCO"), which states that "admissible contentions must focus on the issues identified in the notice of hearing [and] *the application*." Id.(emphasis added). This is precisely the nature of the Department's Contention No. 1: SLC has requested as part of their license renewal to be exempted from significant requirements of a normal materials license, yet has

provided no information in its application that would support such a continued grant. Staff agrees with the Department's Contention No. 3 that the continuation of such an exemption constitutes an admissible basis for requesting a hearing. As there is no significant distinction between the factual and legal bases for the Department's Contention No. 1 and Contention No. 3, staff's position that the Department's Contention No. 1 should be rejected, and Contention No. 1 should be recognized as an admissible contention providing a basis for granting a hearing request.

III. The Department's Contention No. 2, that Safety Light Has No Valid Exemption from the Financial Assurance Requirements That can be Renewed Through This Application Because the Exemption Terminated When Safety Light Failed to Comply with its Current License, Constitutes an Admissible Basis for Granting a Hearing.

Much as with its response to the Department's Contention No. 1, staff does not dispute the factual bases for Contention No. 2 of the Department, Department's Request for Hearing at 19-20, that SLC does not have a presently existing exemption from financial assurance requirements based on its admitted failure to make required contributions to the escrow fund. See NRC Staff Response at 9. Staff also concedes that SLC specifically requested "a continuation" of the exemption that it had been previously granted. *Id.* Staff simply asserts that SLC's failure to comply with its license conditions is not germane to the issue, despite the obvious fact that if SLC has no existing exemption due to its license violations, it cannot be granted a "continuation" of that exemption. Indeed, it is difficult to conceive of an issue more germane to whether an exemption can be continued than the question of whether or not any exemption exists that *can* be continued. While staff is correct as a general matter that past compliance with license conditions does not provide independent bases for granting

a hearing request, the core factual and legal issue of whether an exemption exists such that it might be continued is more than mere compliance history: it goes to the heart of whether or not a specific request by an applicant can be granted.

Staff's position in regards to the Department's No. 2 should be rejected, and Contention No. 2 should be recognized as an admissible contention providing a basis for granting a hearing request.

IV. The Department's Contention No. 6 Constitutes an Admissible Contention that Would Support the Granting of a Hearing Request Because it Relates to a Specific Allegation in SLC's License Renewal Application.

In its Contention No. 6, Department's Request for Hearing at 25-26, the Department contends that Safety Light's failure to dispose of the on-site tritium waste as required by its license constitutes a violation of that license which should result in a denial of their application. Department's Request for Hearing at 25-26. Staff rejects this contention, arguing that this contention merely raises issues of compliance with regulatory requirements such as license conditions, citing 10 CFR Section 2.309(f)(1)(iii). That subsection requires that admissible contentions must "demonstrate that the issue raised in the contention is within the scope of the proceeding." *Id.* Significantly, staff does not directly address the factual basis for the Department's contention: that SLC, in its license renewal application, specifically represented to the Commission that "[w]e have run all operational programs in full compliance with the requirements of our License." Exhibit B to the Department's Request for Hearing at 2 (SLC's License Renewal Application). The removal of waste generated via a licensee's activities would clearly seem to fall within the definition of "operational" and

SLC's representation that it has complied with all "operational requirements" is simply inaccurate as evidenced by the NRC's own documents. See, December 19, 2001, NRC Acceptance of Report of Waste Disposal, ADAMS Accession Number ML013550233; Exhibit B to Department's Request for Hearing at 2 (SLC License Renewal Application). Again, while staff's position that compliance issues are not in and of themselves sufficient bases for granting a hearing is generally true, a material misstatement by a licensee in its renewal application must be taken seriously by the NRC in evaluating that application. The Department contends that not only is a misstatement in a license application "material" as required by 10 CFR 2.309(f)(iv), but it is also the case that the Department's position, as supported by the NRC's own documents, shows that a "genuine dispute exists with the applicant/licensee on a material issues of law or fact", specifically whether or not the applicant's representation of operational compliance with its license as set out in its renewal application is in fact true. 10 CFR 2.309(f)(vi).

Staff's contention in regards to the Department's Contention No. 6 should be rejected. The Department's Contention No. 6 provides an admissible contention which provides the basis for granting a hearing.

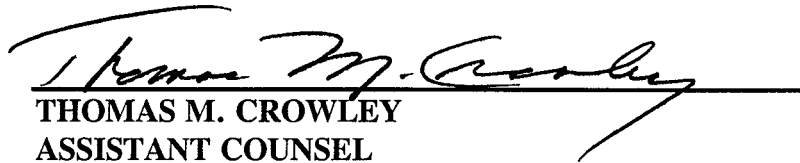
V. CONCLUSION

Staff has conceded that the Department's Contention No. 3 is admissible and provides a basis for a hearing. That contention, when read in combination with the license renewal application submitted by SLC and the requirements of 10 CFR Section 2.309(f)(1) shows that the Department's Contention Nos. 1, 2 and 6 are also admissible

and provide bases for a hearing. Staff does not contest the facts presented by the Department in its request, and these facts show that SLC has not supported its request for exemption from financial assurance, has no existing exemption to be "continued," and has not conducted its operational program "in compliance with its license." The staff's position should be rejected, and the Department's Contentions Nos. 1, 2 and 6 should be deemed admissible bases for a hearing.

Respectfully Submitted,

FOR THE COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF ENVIRONMENTAL
PROTECTION

A handwritten signature in dark ink, appearing to read "Thomas M. Crowley", is written over a horizontal line.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 4th day of October, 2004, a true and correct copy of the foregoing "Response of the Commonwealth of Pennsylvania, Department of Environmental Protection, to the NRC Staff's Response to the Commonwealth of Pennsylvania's Request for Hearing" was transmitted electronically to the Office of the Secretary, Rulemakings and Adjudications Staff and U.S. mail to the following:

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Respectfully Submitted,

FOR THE COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF ENVIRONMENTAL
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Dated: October 4, 2004



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October 4, 2004

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SENT VIA E-MAIL AND U.S. MAIL

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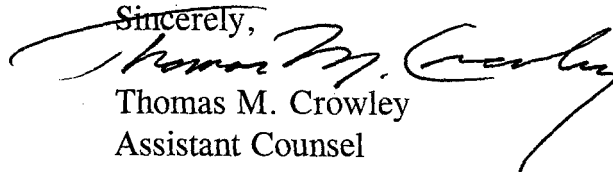
Re: Safety Light Corporation
Docket Nos. 030-05980; 30-5982
ASLBP No. 04-833-07-MLA

Dear Ms. Cook:

Please find enclosed for filing an original and two copies of the Response of the Commonwealth of Pennsylvania, Department of Environmental Protection, to the NRC Staff's Response to the Commonwealth of Pennsylvania's Request for Hearing in reference to the above-captioned matter. Copies have been sent as per certificate of service.

Thank you for your attention to this matter.

Sincerely,


Thomas M. Crowley
Assistant Counsel

/kmm

cc: certificate of service

